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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536

File: SRC 02 214 51945

Office: TEXAS SERVICE CENTER

Date:

JAN 20 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

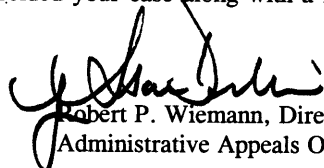
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a corporation that specializes in the development of retail stores, convenience stores, and fast food restaurants for sale to individuals and other businesses. It seeks to employ the beneficiary as a financial manager/analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a) (15) (H) (i) (b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, a brief and additional evidence is presented.¹

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

¹ Because the record as presently constituted does not contain a Form G-28, Notice of Entry of Appearance, by the person who signed the Form I-290B and the accompanying brief, the AAO does not recognize him as the petitioner's representative. Accordingly, the AAO treated the petitioner here as self-represented on appeal. The AAO fully considered all the matters presented with the Form I-290B. However, no representative's copy of this decision will be mailed.

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial manager/analyst. Evidence of the beneficiary's duties in the record includes: the I-129 petition, and the petitioner's August 6, 2002 letter responding to the director's request for evidence. The petition described the proposed duties in general terms of analyzing business operations, procedures, and problems; developing financial control systems; budgeting; financing projects; ensuring liquidity; and maintaining cash flow. According to the August 6, 2002 letter, the beneficiary would perform "two-tiered duties." The first tier would involve financial analysis of (1) retail units which the petitioner is considering for purchase, development, and resale at a profit; and (2) locations that the petitioner identifies for brand new developments. The second tier would concentrate on the petitioner's overall financial health and the effect of proposed projects upon it.

The director found that the proffered position was not a specialty occupation because the job did not meet any of the qualifying criteria for H-1B classification as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In reaching this conclusion, it appears that the director misapprehended the nature of the proposed duties. Focusing on a set of photographs of a gasoline

service center's exterior, convenience store, and office, the director stated, in part, "the photographs submitted clearly establish that the type of business is that of a mini mart/gas station with only two employees (as established by the state quarterly report ending on 6/30/02)."

On appeal, the petitioner first contends that Citizenship and Immigration Services (CIS) is bound by earlier decisions that the petitioner maintains "approved petitions for the same/similar positions in the very recent past." The petitioner also contends that the director's decision mischaracterized the proffered duties, and quotes a paragraph from the petitioner's August 6, 2002 letter to support the contention. In addition, the petitioner takes exception to the director's statement that the petitioner had not shown that it had ever before required a baccalaureate or higher degree for the proffered position. The petitioner refers again to the August 6, 2002 letter, which, in pertinent parts, indicates: this is the first time that the proffered position is being offered; the petitioner had in the past employed a consulting company for financial advice; and that "most of the services obtained by [the petitioner] are usually on a contract basis and not performed by salaried staff."

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO has carefully reviewed all the job description information, including, but not limited to, the general statements about the proffered position's first tier of duties involving: assessment of customers' financial and management strengths; analysis of business operations; identification of financial

problems and their causes; development of financial solutions; and development and analysis of the viability of business plans. The AAO's review also encompassed all the information provided about the second tier of duties, which are described as concentrating on the petitioner's overall operation, including "finances of the corporation as a whole" and ensurance of the "viability of our business plan, liquidity, number crunching, and overall financial management."

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Here, the record does not provide sufficient detail about the proposed duties to identify the proffered position as definitely belonging to the financial manager occupation, the financial analyst occupation, or any other occupation described in the *Handbook*.

The petitioner has described the duties in general terms that do not identify any tasks that would require the theoretical and practical application of highly specialized knowledge that is associated with a baccalaureate or higher degree, or the equivalent, in any specific specialty.

The petitioner is incorrect in its contention that that the listing of a position in the "Occupational Code List" and recent decisions in other H-1B proceedings establish "that the position is in fact a specialty occupation and has been accepted as such by [CIS] in the very recent past.

The "Occupational List" is not identified. If it is a reference to information in DOL's *O*Net* or *Dictionary of Occupational Terms (DOT)*, it is not persuasive. Neither the *O*Net* or the *DOT* assess occupations in terms of specialty occupation status under the Act or its implementing regulations. Also, neither of these sources identify degrees in specific specialties that a position may require.

The contention that CIS is bound by prior decisions in other proceedings is without merit. A prior AAO decision has no precedential value unless it has been designated for publication as precedential. See 8 C.F.R. § 103.3(c).

The petitioner submitted no evidence to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

To the extent that is depicted in the record, the position does not appear so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The record also does not include any evidence from professional associations regarding an industry standard, or

documentation to support the complexity or uniqueness of the proffered position.

The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO turns next to 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3). The petitioner presented no evidence relevant to this criterion, and it stated that the position is being offered for the first time.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(4) - the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO agrees with the petitioner that the director erroneously focused on the service station as comprising the petitioner's business, when actually it appears that the service station evidence was submitted as just one example of the type of retail businesses that the petitioner develops for sale. However, the error is inconsequential to the outcome of this proceeding. This is because the evidence of record failed to substantiate that the proffered position is a specialty occupation.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.